

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**WILLIAM AMMONS**

Claimant

VS.

**PITTSBURG FORD MERCURY**

Respondent

AND

**SENTRY INSURANCE COMPANY**

Insurance Carrier

Docket No. 270,602

**ORDER**

This is an appeal from Administrative Law Judge Kenneth J. Hursh's denial of claimant's Post Award request for additional medical benefits in the form of a myelogram. The Administrative Law Judge (ALJ) explained that "[u]ltimately, the claimant failed to prove that he is entitled to any post-award medical benefits beyond what he has already received."<sup>1</sup>

**ISSUES**

The claimant alleges the ALJ erred in failing to award him the myelogram suggested by his testifying expert, Dr. Frank Holladay. Conversely, respondent contends the ALJ correctly denied claimant's request because Dr. Bernhardt, the physician appointed by the ALJ, testified that claimant would not benefit from the myelogram as claimant was not, in his view, a surgical candidate.

The only issue to be resolved in this appeal is whether the ALJ properly denied claimant's request for post-award medical treatment in the form of a myelogram.<sup>2</sup>

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The ALJ's Order accurately sets forth the underlying facts relevant to this dispute. Distilled to its essence, claimant seeks an Order compelling the respondent to provide him

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<sup>1</sup> ALJ Order (Oct. 5, 2005) at 3.

<sup>2</sup> There is apparently no dispute over the attorney's fees awarded by the ALJ.

with a myelogram to determine if he is a surgical candidate. Respondent disputes the need for the myelogram. Both parties have physicians who bolster their respective positions. Dr. Holladay evaluated claimant and has suggested the myelogram would determine whether claimant was experiencing nerve root impingement and if so, surgery could address that problem and hopefully alleviate claimant's pain complaints. Dr. Bernhardt also saw claimant and has indicated that the MRI claimant had sufficiently addresses that question and while a myelogram is certainly reasonable, he did not believe that a myelogram would alter his opinion that claimant was not a surgical candidate.

Dr. Bernhardt went on to explain that had he known he was authorized to treat claimant, as opposed to a one-time evaluation,

... probably for the patient's reassurance I may have ordered a myelogram to show him that he wasn't a surgical candidate if he believed he was a surgical candidate, because I think it's important for the patient to believe the physician when he tells you, I can't help you. Sometimes you have to prove it with other tests to convince a patient. I didn't think from a treating physician standpoint that it would make a difference in the decision to do surgery. His [claimant's] back pain exceeded his leg pain and that's an overriding factor.<sup>3</sup>

The ALJ considered both parties' evidence and concluded "claimant failed to prove that he is entitled to any post-award medical benefits beyond what he has already received."<sup>4</sup> Thus, claimant's request for the myelogram was denied. The Board has reviewed the evidence offered by the parties and concludes the ALJ's findings and conclusions should not be disturbed. Although this is a very close call, the Board is not persuaded that claimant is entitled to the myelogram. Dr. Bernhardt is firm in his belief that claimant's ongoing complaints of leg pain is chronic and due to deafferentation which is a physiologic change of the nerve root that is not reversible. Claimant's leg pain has been ongoing since after surgery and during the time of the post-surgery MRI. Based upon the record developed to date, the Board is not convinced that the myelogram is necessary to cure and relieve the effects of claimant's injury. Thus, the ALJ's Post-Award Medical Award is affirmed in all respects.

### **AWARD**

**WHEREFORE**, the Board finds the October 5, 2005 Post-Award Medical Award is hereby affirmed.

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<sup>3</sup> Bernhardt Depo at 39-40.

<sup>4</sup> ALJ Order (Oct. 5, 2005) at 3.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: William L. Phalen, Attorney for Claimant  
Donald J. Fritschie, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director